

Supreme Court, U. S.  
FILED

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MICHAEL RORAK, JR., CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-5491

JAMES TYRONE WOODSON and LUBY WAXTON,  
Petitioners,

-v-

STATE OF NORTH CAROLINA,  
Respondent.

ON WRIT OF CERTIORARI  
TO THE  
SUPREME COURT OF NORTH CAROLINA

RESPONSE OF RESPONDENT,  
STATE OF NORTH CAROLINA,  
IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI

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CITATION TO OPINION BELOW

The opinion of the Supreme Court of North Carolina  
is reported at \_\_\_\_\_ N.C. \_\_\_\_\_, 215 S.E.2d 607  
(1975).

## JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court  
pursuant to 28 USC §1257(3).

### QUESTION PRESENTED

1 Whether the imposition and carrying out of the sentence of death for the crime of murder under the law of North Carolina violates the Eighth or Fourteenth Amendments to the Constitution of the United States?

### STATEMENT OF THE CASE

The petitioners have filed with this Court a Petition for a Writ of Certiorari to review the judgment of the Supreme Court of North Carolina, filed on June 26, 1975, affirming the conviction and death sentence of both Woodson and Waxton. The sentence of death was imposed under North Carolina General Statutes 15-144 for the murder of Mrs. Shirley Whittington Butler.

### ARGUMENT

THE COURT SHOULD NOT GRANT CERTIORARI TO CONSIDER WHETHER THE IMPOSITION AND THE CARRYING OUT OF THE SENTENCE OF DEATH FOR THE CRIME OF MURDER VIOLATES THE EIGHTH OR FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

This Court granted certiorari to petitioner Jessie Thurman Fowler in the case of *Fowler v. North Carolina*, No. 73-7031 (Oct. Term, 1974). That case concerns the constitutionality of the death penalty for the defendant convicted of murder in the first degree. Extensive briefs were submitted in that case and oral arguments were made before this Court on April 21, 1975. Additional argument has been called for during the fall term of Court. Hence, petitioner's question has, in essence, been accepted for hearing by the Court. Therefore, any decision in this case should be dependent upon the outcome of the *Fowler* case, and the petition to grant certiorari should be denied.

### CONCLUSION

It is therefore respectfully submitted that the question concerning the constitutionality of the death penalty as applied under the Law of North Carolina is already before this Court; and that the Petition for Writ of Certiorari to the Supreme Court of North Carolina should be denied until a final determination by this Court of the *Fowler* case.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that I am admitted to practice law before the Supreme Court of the United States; and that I have served three copies of the foregoing Response of the State of North Carolina in Opposition to Petition For Writ of Certiorari to the Supreme Court of the United States by depositing of the same to the Counselors for the Petitioner addressed as follows:

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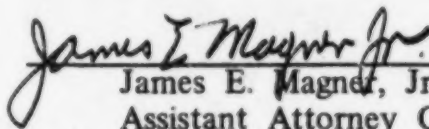
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This the 8 day of October, 1975.

  
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